

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 727 of 1998****For Approval and Signature:****HONOURABLE MR.JUSTICE M.S.SHAH****HONOURABLE MR.JUSTICE H.B.ANTANI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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NATUBHAI RAYSINGBHAI VAGHARI - Appellant**Versus****STATE OF GUJARAT - Respondent**

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Appearance :

MRS SHILPA R SHAH for Appellant.

MR ND GOHIL, ADDITIONAL PUBLIC PROSECUTOR for Respondent.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH**and****HONOURABLE MR.JUSTICE H.B.ANTANI****Date : 12/04/2006****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)**

1. The present appeal, filed by the appellant under Section 374 (2) of the Code of Criminal Procedure, 1973, is directed against the judgment and

order rendered by the learned Additional Sessions Judge, Ahmedabad (Rural) in Sessions Case No. 156 of 1997, by which the learned Additional Sessions Judge convicted the appellant for the offences punishable under Section 498A for 2 years RI and fine of Rs. 500/- (Rupees Five Hundred Only), in default 3 months' RI, and under Section 302 IPC, for life imprisonment and fine of Rs. 1,000/- (Rupees One Thousand Only), in default 6 months' RI. The learned Additional Sessions Judge was pleased to pass the order that the substantive sentences shall run concurrently.

2. The short facts giving rise to the present appeal are as under:

(i) The appellant married deceased Shardaben, sister of the complainant, Bhagabhai Dhayabhai Vaghari. During the married life, the appellant used to inflict mental and physical torture on deceased Shardaben. He visited the residence of his father-in-law situated in Village: Timba, Taluka: Daskroi, District: Ahmedabad on 02-07-1997 and requested deceased Shardaben to return to the matrimonial home. As deceased Shardaben was fed up with the torture inflicted on her by the appellant, she turned down request. Thereafter, the appellant got infuriated and took *dharial* and gave *dharial* blow to deceased Shardaben on the head, front portion of the face and left-hand side of the ear as well as wrist of the left hand with a view to kill her and thereby caused

the death of deceased Shardaben. Deceased Shardaben was immediately rushed to the hospital and ultimately, she succumbed to her injuries.

(ii) The complaint was given by Bhagabhai Dhayabhai Vaghari on 02-07-1997 to the Police Inspector, Aslali Police Station. On the strength of the complaint given by Bhagabhai Dhayabhai, an offence was registered against the appellant. The place, where the ghastly accident had taken place, was visited by PSI Ramsinhbhai Laxmansinh Chauhan. The *panchnama* with regard to the place of incident was prepared. The inquest *panchnama* of the dead body of the deceased was also prepared in the presence of the *panch-witnesses*. The Investigating Officer recorded the statement of the witnesses from the neighbourhood who were conversant with the case. Sample of blood stained mud was recovered in the presence of the *panch-witnesses*. The clothes of the deceased etc. were also seized and the *muddamal* article seized during investigation was sent to FSL to have a detailed analysis. The *panchnama* of the person of the appellant was prepared in the presence of the *panch-witnesses*. The appellant was arrested and charge-sheeted on 23-09-1997.

(iii) The appellant was, thereafter, produced in the Court of the learned Judicial Magistrate (First Class), and as the offence committed by the appellant was exclusively triable by the Court of Sessions, the case was made over for trial before the

learned Additional Sessions Judge, Ahmedabad (Rural). The charge against the appellant was framed *vide* Exh. 1 and the appellant pleaded not guilty to the charge levelled against him. The prosecution, therefore, examined the following witnesses:

- (i) PW 1 Bhagabhai Dhayabhai, at Exh. 6;
- (ii) PW 2 Ashokbhai Dhayabhai, at Exh. 9;
- (iii) PW 3 Thakore Haribhai Udaji, at Exh. 10;
- (iv) PW 4 Baldevbhai Dhayabhai, at Exh. 13;
- (v) PW 5 Dhayabhai Raimalbhai, at Exh. 14;
- (vi) PW 6 Muljibhai Devabhai. at Exh. 15;
- (vii) PW 7 Ramsinh Laxmansinh Chauhan, at Exh. 20;
and
- (viii) PW 8 Dr. Ravindra Shrikrishna Bhise, at Exh. 22 to prove its case against the appellant.

The prosecution has placed reliance on the following documentary evidence:

- (i) Complaint given by Bhagabhai Dhayabhai at Exh. 7;
- (ii) Inquest *panchnama* at Exh. 11;
- (iii) *Panchnama* of the scene of the offence at Exh. 17;
- (iv) *Panchnama* of the clothes of the deceased at Exh. 12;
- (v) *Vardhi* given to the Executive Magistrate to record Dying Declaration of the deceased *vide* Exh. 21;
- (vi) Post-mortem notes of the deceased Shardaben,

- at Exh. 23;
- (vii) Arrest *panchnama* of the appellant, at Exh. 24; and
 - (viii) Forwarding letter written to the FSL, at Exh.27; FSL report, at Exhs. 28 and 29.

3. On the conclusion of the trial before the learned Additional Sessions Judge, further statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973. In his further statement, the appellant stated that due to his inability to hold anything in his right hand, he could not have committed the crime and that he has been falsely implicated in the case.

4. On appreciation of the entire evidence on record of the case, the learned Additional Sessions Judge held that the appellant, after his marriage with the deceased, used to inflict mental and physical torture and it has been proved by the prosecution by adducing cogent and convincing evidence. Further, the learned Judge held that when the request made by the appellant to deceased Shardaben to return to the matrimonial home was turned down, he got infuriated and took *dharial* from the house of deceased Shardaben and gave *dharial* blow on the head, face, ear and wrist of the left-hand of deceased Shardaben and thus caused the ghastly murder of the deceased. As the prosecution, by adducing ocular evidence and documentary evidence, proved the entire link connecting the appellant with the

commission of offence, the learned Additional Sessions Judge convicted the appellant for the offences punishable under Sections 498A and 302 IPC and imposed punishments as stated in the earlier part of the judgment.

5. Ms. Shilpa R. Shah, learned Counsel for the appellant, submitted that the prosecution case largely depends on the deposition adduced by PW 3 Thakore Haribhai Udaji (Exh. 10) and PW 4 Baldevbhai Dhayabhai (Exh. 13). On perusal of the deposition adduced by PW 3, the presence of PW 4 was completely ruled out. Even Thakore Haribhai Udaji had not seen the incident and in fact, he had reached the place of incident after the assault was committed on deceased Shardaben. The deposition adduced by PW 4 Baldevbhai Dahyabhai at Exh. 13 also makes it clear that even he was not present when the actual assault was committed on deceased Shardaben. The deposition of Baldevbhai Dhayabhai completely contradicts the version given by Thakore Hirabhai. Even on the perusal of the judgment rendered by the learned Trial Judge, there is no whisper of discussion about the cruelty inflicted on deceased Shardaben by the appellant and in that view of the matter, the appellant requires to be acquitted for the offence punishable under Section 498A IPC. If the conduct of the appellant, subsequent to the injuries sustained by deceased Shardaben, is taken into account, it becomes clear that he remained in village where the incident had taken place. He even went to the Police Station and filed the application

against the witnesses with a prayer that they may be restrained from committing breach of peace. The learned Advocate submitted that in view of the aforesaid facts and circumstances, the appellant had no reason to kill deceased Shardaben, and as the prosecution has miserably failed to prove that the appellant was inextricably involved in the commission of the offence by establishing the entire chain connecting the appellant with the commission of the offence, benefit be given to the appellant and he be acquitted forthwith from the charges levelled against him.

6. Mr. N. D. Gohil, learned Additional Public Prosecutor representing the State, submitted that if the deposition adduced by two eye-witnesses i.e. PW 3 Thakore Haribhai Udaji at Exh. 10 and PW 4 Baldevbhai Dhayabhai at Exh. 13 are read along with the deposition adduced by Dr. Ravindra Shrikrishna Bhise at Exh. 22, it becomes clear that the prosecution has established the involvement of the appellant in the commission of offence. It is also argued by the learned Additional Public Prosecutor that the learned Trial Judge has rightly come to the conclusion that the appellant had committed mental and physical torture on deceased Shardaben. When the request made by the appellant to deceased Shardaben to return to the matrimonial home was turned down, the appellant got infuriated and gave *dharial* blow on the head, face, ear and left hand portion of the wrist of deceased Shardaben, thereby, the appellant committed

the offences punishable under Sections 498A and 302 IPC. It is also contended by the learned Additional Public Prosecutor that the learned Judge has, after taking into consideration the entire gamut of oral deposition and documentary evidence, rightly, held that the appellant committed the offences mentioned hereinabove and, therefore, the decision rendered by the learned Additional Sessions Judge requires to be upheld.

7. This Court has heard Ms. Shilpa R. Shah, learned Counsel of the appellant and Mr. N.D. Gohil, learned Additional Public Prosecutor for the State, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case as well as the entire evidence on record with reference to broad and reasonable probabilities of the case.

8.1 The first contention, raised by the learned Counsel on behalf of the appellant, that the deposition adduced by PW 3 Thakore Haribhai Udaji *vide* Exh. 10 and PW 4 Baldevbhai Dhayabhai at Exh. 13 is inconsistent or incongruous to the prosecution case, is without any substance.

8.1.1 On perusal of the deposition adduced by PW 3 Thakore Haribhai at Exh. 10, he has stated that the incident took place before 8 months. Further, when the incident took place, he was at his home. He heard the shouts and on hearing the shouts, he went

to the place of incident. He saw the appellant throwing *dharial* in the bush situated near the tree and fled from the scene of offence. Deceased Shardaben was lying on the floor and she had sustained serious injuries on the head and other parts of the body. In his cross-examination, he has deposed that he had seen the appellant before 4 or 5 days prior to the occurrence of incident. The appellant was seen by him near the *Neem* tree. The *dharial* was thrown by the appellant with the right hand in the bush.

8.1.2 The deposition adduced by PW 4 Baldevbhai Dhayabhai at Exh. 13 makes it clear that the appellant was involved in the commission of offence. He has stated in the deposition that deceased Shardaben had two daughters and she used to reside with the appellant at Sankej. The appellant never permitted deceased Shardaben to visit her parents house. He even used to beat Shardaben after taking liquor on number of occasions. After two or three years, his sister came to her parents house along with two daughters in the absence of his brother-in-law. As the appellant was inflicting mental and physical torture, deceased Shardaben was staying with her parents. He has further deposed that when he was working in the field on the date of incident, he heard the shouts from his nephew and when he reached the place of the incident, his brother-in-law was inflicting *dharial* blow on deceased Shardaben on the head, on the upper portion of the ear and on the

front portion of the face.

8.1.3 Thus, on the perusal of the deposition adduced by two witnesses, it becomes clear that the appellant used to inflict mental and physical torture on deceased Shardaben. After taking liquor, he even used to beat Shardaben. When deceased Shardaben returned to her parents house along with her two kids, the appellant followed her and on reaching the place of his in laws, he picked up quarrel with deceased Shardaben and assaulted Shardaben with *dharia*.

8.2 The deposition adduced by two witnesses also gets the corroboration from the doctor's deposition at Exh. 22. Dr. Ravindra Shrikrishan Bhise carried out autopsy on the dead body of Shardaben. External injuries and internal injuries sustained by deceased Shardaben has been elaborately narrated by Dr. Bishe in his deposition as well as Post-Morten Report produced at Exh. 23. The doctor has, in clear terms, stated in the deposition that the cause of the death of the deceased was due to shock and as a result of the head injuries sustained by her. It is also stated by the doctor that injury Nos. 1 and 2 sustained by deceased Shardaben was in the ordinary course of nature sufficient to cause her death. Injury Nos. 3 and 4 were of a serious nature. Thus, the necessary corroboration is forthcoming from the deposition of the doctor as well as the Post-Mortem Report produced at Exh. 23.

8.3 Further corroboration is also provided to the prosecution case by the FSL Report *vide* Exhs. 28 and 29. The analysis given by the Scientific Officer makes it abundantly clear that Blood Group 'B' was found on the *dharía* as well as on the *saree*, gown, petty-coat, brassiere, knickers as well as on the bushirt of the appellant.

8.4 The weapon, which was used in the commission of the offence, was seized and although the *panch-witnesses* have not been examined by the prosecution, necessary corroboration is provided by the deposition adduced by PW 7 Ramsinh Laxmansinh Chauhan at Exh. 20.

8.5 The complaint given by Dhayabhai Raimalbhai at Exh. 7, the inquest *panchnama* at Exh. 11, the *panchnama* of the clothes of the deceased at Exh. 12 and the *panchnama* of the scene of the offence at Exh. 17 also lends corroboration to the prosecution case indicating the involvement of the appellant in the commission of the offence.

8.6 Over and above the two eye-witnesses, the prosecution has examined complainant PW 1 Bhagabhai Dhayabhai at Exh. 6. He has reiterated in his deposition about the mental and physical torture inflicted on deceased Shardaben by the appellant and the *dharía* blow which was given by the appellant to deceased Shardaben.

8.7 The father of deceased Shardaben, PW 5 Dhayabhai Raimalbhai, who is examined at Exh. 14, supports the prosecution case with regard to the torture inflicted by the appellant on deceased and the deadly blow given by the appellant to the deceased on the head, face and ear.

8.8 Investigating Officer PW 7 Ramsinghbhai Laxmanbhai Chauhan, who is examined at Exh. 20, carried out the investigation on the strength of the complaint given by the complainant. All necessary formalities were carried out by the Investigating Officer and all required steps were taken to complete the investigation.

8.9 The contention, raised by the learned Advocate, that conduct of the appellant suggests that he was not at all involved in the commission of offence and innocent, has not substance. The ocular evidence of PW 3 Thakore Haribhai Udaji at Exh. 10, PW 4 Baldevbhai Dahyabhai at Exh. 13, and father of deceased i.e. PW 5 Dahyabhai Raimalbhai at Exh. 14, makes it abundantly clear that after inflicting physical torture, the appellant got infuriated and gave *dharial* blow to the deceased with a view to get rid of the deceased.

8.10 It is urged by the learned Advocate for the appellant that there is no evidence to indicate that torture was ever inflicted by the appellant on the

deceased. However, this argument canvassed by the learned Advocate is without any substance. The deposition adduced by father of deceased i.e. PW 5 Dahyabhai Raimalbhai at Exh.14 makes it evident that mental and physical torture was inflicted by the appellant on the deceased and subsequently, he got enraged and assaulted the deceased. Dahyabhai has no axe to grind against the appellant and naturally, he would not falsely implicate the appellant in the commission of offence.

8.11 Thus, on perusal of the overall oral deposition as well as the documentary evidence, the prosecution has proved the involvement of the appellant in the commission of offence and as the involvement of the appellant in the commission of offence is proved by the prosecution by adducing cogent, convincing and clinching evidence, the judgment rendered by the learned Additional Sessions Judge, Ahmedabad (Rural) requires to be upheld.

9. For the foregoing reasons, the appeal fails and it is dismissed. *Muddamal* articles be disposed of in terms of directions given by the learned Trial Judge in the impugned order.

[M. S. SHAH, J.]

[H. B. ANTANI, J.]

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